

1 COCHISE COUNTY ATTORNEY'S OFFICE
2 Brian M. McIntyre
3 Post Office Drawer CA
4 Bisbee, Arizona 85603
5 (520) 432-8700 Telephone, (520) 432-2487 Telecopier

6 SARA V. RANSOM (ASB No. 024099)
7 Deputy County Attorney
8 attymeo@cochise.az.gov
9 Attorney for the State of Arizona

10 IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

11 IN AND FOR THE COUNTY OF COCHISE

12 STATE OF ARIZONA,) Case No. CR201800385
13 Plaintiff,) JUDGE WALLACE R. HOGGATT
14 vs.) DIVISION
15 LUIS SIQUEIROS MEDINA,)
16 Defendant.)
17

18 Pursuant to stipulation of the parties and good cause appearing, the Court hereby enters the
19 following protective order governing the treatment of documents in these proceedings and thereafter:

20 1. **PURPOSES AND LIMITATIONS**

21 Disclosure and discovery activity in this action are likely to involve production of confidential,
22 proprietary, or private information for which special protection from public disclosure and from use
23 for any purpose other than prosecuting this litigation may be warranted. The parties acknowledge that
24 this Order does not confer blanket protections on all disclosures or responses to discovery and that the
25 protection it affords from public disclosure and use extends only to the limited information or items
26 that are entitled to confidential treatment under the applicable legal principles.

27 2. **DEFINITIONS**

28 2.1 **Challenging Party:** a Party or Non-Party that challenges the designation of information
or items under this Order.

2.2 **“CONFIDENTIAL” Information or Items:** information (regardless of how it is
generated, stored or maintained) or tangible things that qualify for protection under Arizona Rule of
Civil Procedure 26(c), the Health Insurance Portability and Accountability Act, A.R.S. § 8-208, 807,

1 the Victim's Bill of Rights detailed within the Arizona Constitution at Section 2.1 (and implementing
2 statutes), or other statutes defining confidential, private, sensitive or privileged information.

3 2.3 Counsel: Attorneys for the Defendant, including current or former counsel of record,
4 or the State of Arizona (as well as their respective support staff).

5 2.4 Designating Party: a Party or Non-Party that designates information or items that it
6 produces in disclosures or in responses to discovery as "CONFIDENTIAL."

7 2.5 Disclosure or Discovery Material: all items or information, regardless of the medium
8 or manner in which it is generated, stored, or maintained (including, among other things, testimony,
9 transcripts, and tangible things), that are produced or generated in disclosures or responses to
10 discovery in this matter.

11 2.6 Expert: a person with specialized knowledge or experience in a matter pertinent to the
12 litigation who has been retained by a Party or its counsel to serve as an expert witness or as a consultant
13 in this action.

14 2.7. Law Enforcement: agencies engaged in enforcing the law, including, but not limited
15 to, federal, state, county or city policing agencies, probation department employees, and investigative
16 agencies tasked with evaluating and collecting information related to potential criminal acts.

17 2.8 Non-Party: any natural person, partnership, corporation, association, or other legal
18 entity not named as a Party to this action.

19 2.9 Party: any party to this action, including all of its officers, directors, employees,
20 consultants, retained experts, and Counsel (and their support staffs).

21 2.11 Producing Party: a Party or Non-Party that produces Disclosure or Discovery Material
22 in this action.

23 2.12 Professional Vendors: persons or entities that provide litigation support services (e.g.,
24 photocopying, videotaping, translating, preparing exhibits or demonstrations, and organizing, storing,
25 or retrieving data in any form or medium) and their employees and subcontractors.

26 2.13 Protected Material: any Confidential Information or Item that is designated as such by
27 a party.

28 2.14 Receiving Party: a Party that receives Disclosure or Discovery Material from a

1 Producing Party.

2 3. SCOPE

3 The protections conferred by this Stipulation and Order cover not only Protected Material (as
4 defined above), but also (1) any information copied or extracted from Protected Material; (2) all
5 copies, excerpts, summaries, or compilations of Protected Material; and (3) any testimony,
6 conversations, or presentations by Parties or their Counsel that might reveal Protected Material.
7 However, the protections conferred by this Stipulation and Order do not cover the following
8 information: (a) any information that is in the public domain at the time of disclosure to a Receiving
9 Party or becomes part of the public domain after its disclosure to a Receiving Party as a result of
10 publication not involving a violation of this Order, including becoming part of the public record
11 through trial or otherwise; and (b) any information known to the Receiving Party prior to the disclosure
12 or obtained by the Receiving Party after the disclosure from a source who obtained the information
13 lawfully and under no obligation of confidentiality to the Designating Party. Any use of Protected
14 Material at trial shall be governed by a separate agreement or order.

15 4. DURATION

16 Even after final disposition of this litigation, the confidentiality obligations imposed by this
17 Order shall remain in effect until a Designating Party agrees otherwise in writing or a court order
18 otherwise directs. Final disposition shall be deemed to be the later of (1) dismissal of all claims and
19 defenses in this action, with or without prejudice; and (2) final judgment herein after the completion
20 and exhaustion of all appeals, rehearings, remands, trials, or reviews of this action, including the time
21 limits for filing any motions or applications for extension of time pursuant to applicable law.

22 5. DESIGNATING PROTECTED MATERIAL

23 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each Party or
24 Non-Party that designates information or items for protection under this Order must take care to limit
25 any such designation to specific material that qualifies under the appropriate standards. The
26 Designating Party must designate for protection only those parts of material, documents, items, or oral
27 or written communications that qualify – so that other portions of the material, documents, items, or
28 communications for which protection is not warranted are not swept unjustifiably within the ambit of

1 this Order.

2 Mass, indiscriminate, or routinized designations are prohibited. Designations that are shown
3 to be clearly unjustified or that have been made for an improper purpose (e.g., to unnecessarily
4 encumber or retard the case development process or to impose unnecessary expenses and burdens on
5 other parties) expose the Designating Party to sanctions. If it comes to a Designating Party's attention
6 that information or items that it designated for protection do not qualify for protection, the Designating
7 Party must promptly notify all other Parties that it is withdrawing the mistaken designation.

8 5.2 Manner and Timing of Designations. Except as otherwise provided in this Order (see,
9 e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated or ordered, Disclosure or
10 Discovery Material that qualifies for protection under this Order must be clearly so designated before
11 the material is disclosed or produced.

12 Designation in conformity with this Order requires:

13 (a) for information in documentary form (e.g., paper or electronic documents, but
14 excluding transcripts of depositions or other pretrial or trial proceedings), that the Producing Party
15 affix the legend "CONFIDENTIAL" to each page that contains protected material. If only a portion
16 or portions of the material on a page qualifies for protection, the Producing Party also must clearly
17 identify the protected portion(s) (e.g., by making appropriate markings in the margins). Where all
18 documents contained within a compact disk, thumb drive or other electronic media storage device are
19 "CONFIDENTIAL," the Producing Party may note the designation on the compact disk, thumb drive
20 or other electronic media storage device and such designation shall be deemed to apply to each and
21 every document on the electronic media storage device. A Party or Non-Party that makes original
22 documents or materials available for inspection need not designate them for protection until after the
23 inspecting Party has indicated which material it would like copied and produced. During the inspection
24 and before the designation, all of the material made available for inspection shall be deemed
25 "CONFIDENTIAL." After the inspecting Party has identified the documents it wants copied and
26 produced, the Producing Party must determine which documents, or portions thereof, qualify for
27 protection under this Order. Then, before producing the specified documents, the Producing Party
28 must affix the "CONFIDENTIAL" legend to each page that contains Protected Material. If only a

1 portion or portions of the material on a page qualifies for protection, the Producing Party also must
2 clearly identify the protected portion(s) (e.g., by making appropriate markings in the margins).

3 (b) for testimony given in deposition or in other pretrial or trial proceedings, that the
4 Designating Party identify on the record, before the close of the deposition, hearing, or other
5 proceeding, all protected testimony.

6 (c) for information produced in some form other than documentary and for any other
7 tangible items, that the Producing Party affix in a prominent place on the exterior of the container or
8 containers in which the information or item is stored the legend "CONFIDENTIAL." If only a portion
9 or portions of the information or item warrant protection, the Producing Party, to the extent practicable,
10 shall identify the protected portion(s).

11 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to
12 designate qualified information or items does not, standing alone, waive the Designating Party's right
13 to secure protection under this Order for such material. Upon timely correction of a designation, the
14 Receiving Party must make reasonable efforts to assure that the material is treated in accordance with
15 the provisions of this Order.

16 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

17 6.1 Timing of Challenges. Any Party or Non-Party may challenge a designation of
18 confidentiality at any time. Unless a prompt challenge to a Designating Party's confidentiality
19 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic burdens,
20 or a significant disruption or delay of the litigation, a Party does not waive its right to challenge a
21 confidentiality designation by electing not to mount a challenge promptly after the original designation
22 is disclosed.

23 6.2 Meet and Confer. The Challenging Party shall initiate the dispute resolution process
24 by providing written notice of each designation it is challenging and describing the basis for each
25 challenge. To avoid ambiguity as to whether a challenge has been made, the written notice must recite
26 that the challenge to confidentiality is being made in accordance with this specific paragraph of the
27 Protective Order. The parties shall attempt to resolve each challenge in good faith and must begin the
28 process by conferring directly within 14 days of the date of service of notice. In conferring, the

1 Challenging Party must explain the basis for its belief that the confidentiality designation was not
2 proper and must give the Designating Party an opportunity to review the designated material, to
3 reconsider the circumstances, and, if no change in designation is offered, to explain the basis for the
4 chosen designation. A Challenging Party may proceed to the next stage of the challenge process only
5 if it has engaged in this meet and confer process first or establishes that the Designating Party is
6 unwilling to participate in the meet and confer process in a timely manner.

7 6.3 Judicial Intervention. If the Parties cannot resolve a challenge without court
8 intervention, the Designating Party shall file and serve a motion to retain confidentiality within 21
9 days of the initial notice of challenge or within 14 days of the parties agreeing that the meet and confer
10 process will not resolve their dispute, whichever is earlier. Each such motion must be accompanied by
11 a competent declaration affirming that the movant has complied with the meet and confer requirements
12 imposed in the preceding paragraph. Failure by the Designating Party to make such a motion including
13 the required declaration within 21 days (or 14 days, if applicable) shall automatically waive the
14 confidentiality designation for each challenged designation. In addition, the Challenging Party may
15 file a motion challenging a confidentiality designation at any time if there is good cause for doing so,
16 including a challenge to the designation of a deposition transcript or any portions thereof. Any motion
17 brought pursuant to this provision must be accompanied by a competent declaration affirming that the
18 movant has complied with the meet and confer requirements imposed by the preceding paragraph.

19 The burden of persuasion in any such challenge proceeding shall be on the Designating Party.
20 Frivolous challenges, and those made for an improper purpose (e.g., to harass or impose unnecessary
21 expenses and burdens on other parties) may expose the Challenging Party to sanctions. Unless the
22 Designating Party has waived the confidentiality designation by failing to file a motion to retain
23 confidentiality as described above, all parties shall continue to afford the material in question the level
24 of protection to which it is entitled under the Producing Party's designation until the court rules on the
25 challenge.

26 7. ACCESS TO AND USE OF PROTECTED MATERIAL

27 7.1 Basic Principles. Except as otherwise mandated by law, confirmed in a writing signed
28 by all Parties, or pursuant to subsequent orders of the Court, the Receiving Party may use Protected

1 Material that is disclosed or produced by another Party or by a Non-Party in connection with this case
2 only for prosecuting, defending, or attempting to settle this litigation. Such Protected Material may be
3 disclosed only to the categories of persons and under the conditions described in this Order. When the
4 litigation has been terminated, a Receiving Party must comply with the provisions of section 13 below
5 (FINAL DISPOSITION).

6 Protected Material must be stored and maintained by a Receiving Party at a location and in a
7 secure manner that ensures that access is limited to the persons authorized under this Order.

8 7.2 Disclosure of Protected Material. Unless otherwise ordered by the court or permitted
9 in writing by the Designating Party, a Receiving Party may disclose Protected Material only to:

10 (a) Notwithstanding any other provision of this Protective Order, the Receiving Party's
11 Counsel in this action, as well as employees of said Counsel to whom it is necessary to disclose the
12 information for this litigation;

13 (b) Experts (as defined in this Order) of the Receiving Party to whom disclosure is
14 reasonably necessary for this prosecution and who have signed the "Acknowledgment and Agreement
15 to Be Bound" (Exhibit A);

16 (c) Law Enforcement to whom disclosure is reasonably necessary for this prosecution and
17 who have signed the "Acknowledgment and Agreement to Be Bound" (Exhibit A);

18 (d) the trial and appellate courts and their employees, including court reporters transcribing
19 court proceedings;

20 (e) deposition court reporters and their staff, professional jury or trial consultants, mock
21 jurors, and Professional Vendors to whom disclosure is reasonably necessary for this litigation and
22 who have signed the "Acknowledgment and Agreement to Be Bound" (Exhibit A);

23 (f) during their depositions, witnesses in the action to whom disclosure is reasonably
24 necessary and who have signed the "Acknowledgment and Agreement to Be Bound" (Exhibit A),
25 unless otherwise agreed by the Designating Party or ordered by the court. Pages of transcribed
26 deposition testimony or exhibits to depositions that reveal Protected Material must be separately bound
27 by the court reporter and may not be disclosed to anyone except as permitted under this Stipulated
28 Protective Order;

(g) the author or recipient of a document containing the information or a custodian or other person who otherwise possessed or knew the information:

(h) the Clerk of the Superior Court and its employees as necessary to allow that office to perform its required functions.

8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER LITIGATION

If a Party is served with a subpoena or a court order issued in other litigation that compels disclosure of any information or items designated in this action as "CONFIDENTIAL," that Party must:

(a) promptly notify in writing the Designating Party. Such notification shall include a copy of the subpoena or court order:

(b) promptly notify in writing the party who caused the subpoena or order to issue in the other litigation that some or all of the material covered by the subpoena or order is subject to this Protective Order. Such notification shall include a copy of this Stipulated Protective Order; and

(c) cooperate with respect to all reasonable procedures sought to be pursued by the Designating Party whose Protected Material may be affected.

If the Designating Party timely seeks a protective order, the Party served with the subpoena or court order shall not produce any information designated in this action as “CONFIDENTIAL” before a determination by the court from which the subpoena or order issued, unless the Party has obtained the Designating Party’s permission. The Designating Party shall bear the burden and expense of seeking protection in that court of its confidential material – and nothing in these provisions should be construed as authorizing or encouraging a Receiving Party in this action to disobey a lawful directive from another court.

9. A NON-PARTY'S PROTECTED MATERIAL SOUGHT TO BE PRODUCED IN THIS LITIGATION

(a) The terms of this Order are applicable to information produced by a Non-Party in this action and designated as "CONFIDENTIAL." Such information produced by Non-Parties in connection with this litigation is protected by the remedies and relief provided by this Order. Nothing

1 in these provisions should be construed as prohibiting a Non-Party from seeking additional
2 protections.

3 (b) In the event that a Party is required, by a valid discovery request, to produce a Non-
4 Party's confidential information in its possession, and the Party is subject to an agreement with the
5 Non-Party not to produce the Non-Party's confidential information, then the Party shall:

6 (1) promptly notify in writing the Requesting Party and the Non-Party that some or all
7 of the information requested is subject to a confidentiality agreement with a Non-Party;

8 (2) promptly provide the Non-Party with a copy of the Stipulated Protective Order in
9 this litigation, the relevant discovery request(s), and a reasonably specific description of the
10 information requested; and

11 (3) make the information requested available for inspection by the Non-Party.

12 (c) If the Non-Party fails to object or seek a protective order from this court within 14 days
13 of receiving the notice and accompanying information, the Receiving Party may produce the Non-
14 Party's confidential information responsive to the discovery request. If the Non-Party timely seeks a
15 protective order, the Receiving Party shall not produce any information in its possession or control
16 that is subject to the confidentiality agreement with the Non-Party before a determination by the court.
17 Absent a court order to the contrary, the Non-Party shall bear the burden and expense of seeking
18 protection in this court of its Protected Material.

19 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

20 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected
21 Material to any person or in any circumstance not authorized under this Stipulated Protective Order,
22 the Receiving Party must immediately (a) notify in writing the Designating Party of the unauthorized
23 disclosures, (b) use its best efforts to retrieve all unauthorized copies of the Protected Material, (c)
24 inform the person or persons to whom unauthorized disclosures were made of all the terms of this
25 Order, and (d) request such person or persons to execute the "Acknowledgment and Agreement to Be
26 Bound" that is attached hereto as Exhibit A.

27 11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED
28 MATERIAL

1 When a Producing Party gives notice to Receiving Parties that certain inadvertently produced
2 material is subject to a claim of privilege or other protection, the obligations of the Receiving Parties
3 are those set forth in Arizona Ethical Rule 4.4(b) and Arizona Rules of Civil Procedure 26(f)(2).

4 **12. MISCELLANEOUS**

5 12.1 Right to Further Relief. Nothing in this Order abridges the right of any person to seek
6 its modification by the court in the future.

7 12.2 Right to Assert Other Objections. By stipulating to the entry of this Protective Order
8 no Party waives any right it otherwise would have to object to disclosing or producing any information
9 or item on any ground not addressed in this Stipulated Protective Order. Similarly, no Party waives
10 any right to object on any ground to use in evidence of any of the material covered by this Protective
11 Order.

12 12.3 Filing Protected Material. Without written permission from the Designating Party or a
13 court order secured after appropriate notice to all interested persons, a Party may not file in the public
14 record in this action any Protected Material. A Party that seeks to file under seal any Protected Material
15 must first obtain a court order granting the Party the right to file the documents under seal Protected
16 Material may only be filed under seal pursuant to a court order authorizing the sealing of the specific
17 Protected Material at issue.

18 **13. FINAL DISPOSITION**

19 Within 60 days after the final disposition of this action, as defined in paragraph 4, each
20 Receiving Party must return all Protected Material to the Producing Party or destroy such material. As
21 used in this subdivision, "all Protected Material" includes all copies, abstracts, compilations,
22 summaries, and any other format reproducing or capturing any of the Protected Material. Whether the
23 Protected Material is returned or destroyed, the Receiving Party must submit a written certification to
24 the Producing Party (and, if not the same person or entity, to the Designating Party) by the 60 day
25 deadline that (1) identifies (by category, where appropriate) all the Protected Material that was
26 returned or destroyed and (2) affirms that the Receiving Party has not retained any copies, abstracts,
27 compilations, summaries or any other format reproducing or capturing any of the Protected Material.
28 Notwithstanding this provision, Counsel are entitled to retain an archival copy of any and all Protected

1 material including, but not limited to: pleadings; motion papers; trial, deposition and hearing
2 transcripts; legal memoranda; correspondence; deposition and trial exhibits; expert reports; attorney
3 consultant and expert work product. Any such archival copies that contain or constitute Protected
4 Material remain subject to this Protective Order as set forth in Section 4 (DURATION).

5 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD, AND ENTERED BY THE
6 COURT ON THE DATE WRITTEN BELOW.

7

8 DATED: _____

9 Judge of the Superior Court

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of _____ [print full address], declare under penalty of perjury that I have read in its entirety and understand the Stipulated Protective Order that was issued by the Superior Court in and for the County of Cochise State of Arizona in the case of *State v. Medina*, CR201800385. I agree to comply with and to be bound by all the terms of this Stipulated Protective Order and I understand and acknowledge that failure to do so could expose me to sanctions and punishment in the nature of contempt. I only promise that I will not disclose in any manner any information or item that is subject to this Stipulated Protective Order to any person or entity except in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the Superior Court in and for the County of Cochise in the State of Arizona for the purpose of enforcing the terms of this Stipulated Protective Order, even if such enforcement proceedings occur after termination of this action.

I hereby appoint _____ [print or type full name] of
_____ [print or type full address and telephone number] as
my Arizona agent for service of process in connection with this action or any proceedings related to
enforcement of this Stipulated Protective Order.

Date: _____

City and State where sworn and signed: _____

Printed name:

Signature: